

SUBCHAPTER B: TREATED MARINE SEAWATER DISCHARGES

§§318.21 - 318.30

Effective December 8, 2016

§318.21. Applicability.

This subchapter applies to:

(1) applications to discharge treated marine seawater from a marine seawater desalination project; and

(2) applications for a consolidated permit to discharge treated marine seawater and off-shore discharges.

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§318.22. Application Review for Treated Marine Seawater Discharges.

(a) Upon receipt of an application, the executive director or his designee shall assign the application a number for identification purposes.

(b) Applications for permits shall be reviewed by the staff for administrative completeness within five business days of receipt of the application by the executive director.

(c) If an application is received which is not administratively complete, the executive director shall notify the applicant of the deficiencies by email by the end of the five-day review period.

(1) If the additional information is received within five business days of notice of the deficiency, the executive director will evaluate the information within five business days of receipt of the additional information.

(2) If the additional information is not received within five business days of notice of the deficiency, the application shall be considered withdrawn unless there are extenuating circumstances.

(d) After an application is determined by the executive director to be administratively complete, the executive director shall commence a technical review as necessary and appropriate for a period of time not to exceed 30 business days from the date the application is declared administratively complete.

(e) If an application is received which is not technically complete, the executive director shall notify the applicant by email and prior to the end of the 30-day review period of any additional technical material as may be necessary for a complete review.

(1) If the additional information is received within the timeframe established by the technical review staff, the staff will review the additional information to determine if the application is technically complete.

(2) If the additional information is not received within the timeframe established by the technical review staff, and the information is considered essential by the executive director to make recommendations to the commission on a particular matter, the executive director may return the application to the applicant. In no event, however, will the applicant have less than 15 days to provide the technical data before an application is returned. Decisions to return an application during the technical review stage will be made on a case-by-case basis. The applicant has the option of having the question of sufficiency of necessary technical data referred to the commission for a decision prior to having the application returned.

(f) After an application is determined by the executive director to be technically complete, the executive director shall prepare a draft permit consistent with all applicable commission rules, unless a recommendation is made not to grant an application. The draft permit will be filed with the commission to be included in the consideration of the application for permit and is subject to change during the course of the proceedings on the application. The draft permit shall be available for public review.

(g) The executive director shall prepare a technical summary which sets forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit. The summary shall include the following information, where applicable:

(1) a brief description of the marine seawater desalination project which is the subject of the draft permit;

(2) the quality and quantity of treated marine seawater that is proposed to be discharged;

(3) a brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions;

(4) reasons why any requested variances or alternatives to required standards do or do not appear justified;

(5) a description of the procedures for reaching a final decision on the draft permit, including procedures by which the public may participate in the final decision; and

(6) the name and telephone number of agency personnel to contact for additional information.

(h) After the draft permit and technical summary are prepared and prior to issuance of public notice, the executive director shall email the draft permit and technical summary to the applicant. The applicant shall have 10 business days to review and provide comment on the draft permit.

(i) Public notice and comment must comply with procedures in §39.902 of this title (relating to Public Notice and Comment for Treated Marine Seawater Discharges).

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§318.23. Public Meeting.

(a) Applications for a discharge permit for treated marine seawater shall comply with the relevant public meeting provisions in §55.154 of this title (relating to Public Meetings), except as noted in this section.

(b) New, major amendment, and renewal applications have the opportunity for a public meeting. Minor amendment and minor modification applications are not subject to a public meeting.

(c) Notice of a public meeting must follow the procedures in §39.902(f) and (g) of this title (relating to Public Notice and Comment for Treated Marine Seawater Discharges).

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§318.24. Public Comment Processing.

(a) If timely comments are received, the following procedures shall apply to applications processed under this subchapter:

(1) §55.156 of this title (relating to Public Comment Processing); and

(2) §39.420(a), (b), and (f) of this title (relating to Transmittal of Executive Director's Response to Comments and Decision).

(b) A public comment that is not filed with the chief clerk by the deadline provided in the notice shall be accepted by the chief clerk and placed in the application file but the chief clerk shall not process it.

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§318.25. Action by the Executive Director.

Actions by the executive director under this subchapter are subject to the provisions in §§50.133, 50.135, and 50.137 of this title (relating to Executive Director Action on Application or WQMP Update; Effective Date of Executive Director Action; and Remand for Action by Executive Director, respectively).

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§318.26. Motion to Overturn Executive Director's Decision.

A motion to overturn may be filed under this subchapter in accordance with the provisions in §50.139 of this title (relating to Motion to Overturn Executive Director's Decision).

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§318.27. Request for Contested Case Hearing on an Application.

(a) New, major amendment, and renewal applications have the opportunity for a contested case hearing. Minor amendment and minor modification applications are not subject to a contested case hearing.

(b) Requests for a Contested Case Hearing are subject to the provisions in §§55.201, 55.203, 55.205, and 55.209 of this title (relating to Requests for Reconsideration or Contested Case Hearing; Determination of Affected Person; Request by Group or Association; and Processing Requests for Reconsideration and Contested Case Hearing, respectively).

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§318.28. Direct Referrals.

The executive director or the applicant may file a request with the chief clerk that the application be sent directly to the State Office of Administrative Hearings for a hearing on the application, pursuant to the provisions in §55.210 of this title (relating to Direct Referrals).

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§318.29. Action by the Commission.

Commission consideration of the following items are subject to the provisions in §§50.113, 50.115, 50.117, 50.119, and 55.211 of this title (relating to Applicability and Action on Application; Scope of Contested Case Hearings; Commission Actions; Notice of Commission Action; Motion for Rehearing; and Commission Action of Requests for Reconsideration and Contested Case Hearing, respectively). The commission may refer an application to the State Office of Administrative Hearings if the commission finds that an applicant's compliance history, as determined under Chapter 60 of this title (relating to Compliance History), raises an issue regarding the applicant's ability to comply with a material term of its permit.

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§318.30. Contested Case Hearing Proceedings.

Contested case hearings on applications for discharges of treated marine seawater shall be conducted in accordance with Chapter 80 of this title (relating to Contested Case Hearings).

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